

**STATE OF INDIANA'S  
STANDARD CONTRACT FOR DESIGN OF A PUBLIC WORKS PROJECT**

**THIS PUBLIC WORKS CONSTRUCTION CONTRACT**, ("Contract"), entered into by and between the Indiana Department Of Administration's Public Works Division (the "State"), and XXXXXXXXXXXXXX ("Designer"), is executed pursuant to the terms and conditions set forth herein and is governed by Indiana Code 4-13.6, *et seq.*

**WHEREAS**, the State intends to undertake a capital improvement project to be entitled ("Project"):

**Public Works Project No. XXXXX: DESCRIPTION;**

For and on behalf of: **DEPARTMENT ("Using Agency");**

Located on a site designated as: **FACILITY;** and

**WHEREAS**, the Public Works Division's ("Division") Director ("Director") has accepted the Project referenced and described above pursuant to IC 4-13.6-3-2(8), and has determined a fee not to exceed **\$XX,XXX.XX** for Basic Design Services and has determined the total costs under this Contract shall not exceed funds available, which in any event shall not to exceed the current funding of **\$XX,XXX.XX**, unless authorized in writing by the Director.

**NOW, THEREFORE**, the State and the Designer, pursuant to the following terms and conditions, and in consideration for those mutual undertakings and covenants, hereby agree as follows:

**ARTICLE 1.** THE DESIGNER AGREES TO PROVIDE PROFESSIONAL SERVICES FOR THE PROJECT UNDER THE DIRECTION OF: **[INSERT NAME, LICENSE ###]**

THE DESIGNER AGREES TO CERTIFY THE WORK AS THE DESIGNER OF RECORD.

**ARTICLE 2.** THE STATE AGREES TO COMPENSATE THE DESIGNER AS FOLLOWS:

- 2.1 For Basic Design Services, the firm fee as set forth above;
- 2.2 For Additional Services, the amount set forth in Articles 4 and 13, below;
- 2.3 For Direct and/or Reimbursable Expenses, the amount set forth in Article 7, below;
- 2.4 For Basic Design Services performed prior to the receipt of written notice from the State of the Project's abandonment, an agreed upon percentage of the firm fee commensurate with percentage of Basic Design Services completed;
- 2.5 For Basic Design Services required by the State to change any previously-approved scope of the Project, an amount agreed upon prior to executing those changes.

**ARTICLE 3.** **BASIC DESIGN SERVICES.** The Designer shall refer to the *Public Works Designer Manual*, previously furnished to the Designer by the State and incorporated herein fully by reference, for additional detail on the services described in this Article. The *Public Works Designer Manual* is available at <http://www.in.gov/idoa/2484.htm>.

### 3.1 SCHEMATIC DESIGN PHASE.

After receipt of this fully executed Contract, the Designer shall commence and complete the following services:

- 3.1.1 The Designer shall consult with the Director and the Using Agency to ascertain the requirements of the Project based on the Indiana General Assembly's approved Project description in the capital budget and understandings between the Using Agency, the Director and the Designer. Such requirements shall be reduced to a written program by the Designer and approved by the Director before the Authorization to Proceed with Schematic Design Phase is issued.
- 3.1.2 Based on the program requirements, the Designer shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationships of program components for presentation to, and review and approval by, the Director.
- 3.1.3 The Designer shall be responsible for obtaining sufficient information to properly design the Project and shall be responsible for field information verification.
- 3.1.4 The Designer shall provide a good faith estimate of probable construction costs for the Director's review and approval.
- 3.1.5 On the first day of each month, the Designer shall furnish to the Public Works Division's Project Manager or his designee ("Project Manager") duplicate copies of the Monthly Planning Report (DAPW 2) specifying the progress of the professional services, and shall make note of any changes in the latest estimate of probable construction costs.

### 3.2 DESIGN DEVELOPMENT PHASE.

After authorization from the Director to undertake the Design Development Phase is issued, the Designer shall commence and complete the following services:

- 3.2.1 The Designer shall prepare, from the approved Schematic Design Studies, the Design Development Documents consisting of plans, sections, elevations, other drawings and outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials, types of structure, mechanical, electrical systems and such other work as may be required.
- 3.2.2 The Designer shall provide a good faith estimate of probable construction costs with design development plans and outline specifications for the Director's review and approval.
- 3.2.3 On the first day of each month, the Designer shall furnish to the Project Manager duplicate copies of the Monthly Planning Report (DAPW 2) specifying the progress of the professional services, and shall make note of any changes in the latest estimate of probable construction costs.

### 3.3 CONSTRUCTION DOCUMENTS PHASE.

After authorization from the Director to undertake the Construction Documents Phase is issued, the Designer shall commence and complete the following services:

- 3.3.1 The Designer shall prepare, from the approved Design Development Documents, Working Drawings and Specifications setting forth, in detail, the work required for the architectural, structural, mechanical, electrical, civil, service-connected equipment, site work and necessary bidding information. The Designer shall include all required State documents for bidding. Use of alternates shall have prior written approval of the Director.

- 3.3.2 The Designer shall advise the Project Manager of any adjustments to previous good faith estimates of probable construction costs of any variances indicated by approved changes in scope, requirements or market conditions.
- 3.3.3 The Designer shall be responsible for filing the required documents to secure, previous to bidding, approval of Indiana Department of Homeland Security's Division of Fire and Building Safety, the Indiana State Department of Health and all other governmental authorities having jurisdiction over the Project's design.
- 3.3.4 Final plans, specifications and detailed good faith estimates of probable construction costs shall be approved, in writing, by the Using Agency and the Director before the Bidding Phase commences.
- 3.3.5 On the first day of each month, the Designer shall furnish to the Project Manager duplicate copies of the Monthly Planning Report (DAPW 2) specifying the progress of the professional services, and shall make note of any changes in the good faith estimate of probable construction costs.

#### 3.4 BIDDING PHASE.

After authorization from the Director to undertake bidding is issued, the Designer shall commence and complete the following services:

- 3.4.1 When a bid date is requested, the Designer shall initiate the Notice to Bidders (DAPW 28) and submit such to the Project Manager. The Project Manager shall establish and confirm the bid date and time and shall issue all notices and advertisements as required by law.
- 3.4.2 The Designer shall actively solicit bids and notify prospective contractors. Designer shall prepare, print, and distribute all copies of the Contract Documents, which shall include the Public Work's Solicitation for Quotation (DAPW 30), Bid Documentation, Pre-Contract Document, General Conditions (DAPW 26), Supplementary Conditions, Instructions to Bidders, Drawings, Specifications and Addenda (hereinafter collectively referred to as "Contract Documents"), as required by the Project Manager for the Bidding Phase.
- 3.4.3 The Designer shall supply sets of Project documents to each bidder who requests the same at a nominal cost, with no less than an 80% refund for all plans returned to the Designer in usable condition and within a reasonable time.
- 3.4.4 The Designer shall schedule and conduct a pre-bid visit to the Project Site early in the bid period, and shall ascertain the need for any letters of clarification or addenda.
- 3.4.5 The Designer shall be present at bid opening(s).
- 3.4.6 The Designer shall make written recommendations of contractors, alternates and amounts for award of contracts.
- 3.4.7 In the event that the lowest bona fide bid exceeds the Designer's Construction Document Phase estimate, as previously approved by the Director, and is unacceptable to the Director, then the Designer shall, in cooperation with the Using Agency and the Director and pursuant to 25 Indiana Administrative Code 2-3-6, revise the Project's scope and/or quality to meet the approved budget, rebid the Project and complete additional follow up and general administration as would otherwise be required under this Contract, all at no additional cost to the State.

#### 3.5 CONSTRUCTION PHASE.

After authorization from the Director to undertake the Construction Phase is issued, the Designer shall proceed with general administration of the construction contracts, including the following services:

- 3.5.1 The Designer shall schedule and officiate the pre-construction conference at the Project Site with prime contractors and the Project Manager. At least seven (7) days in advance, the Using Agency and the Division shall be notified of all conference schedules. Five (5) sets of construction documents shall be distributed to all prime contractors. Periodic progress meetings shall be held under the direction of the Designer, as otherwise provided by specifications or as required by the Division. The Designer shall record, keep and distribute minutes of all meetings.
- 3.5.2 The Designer shall, upon the State's request, be available for consultation on matters relating to claims and to the execution and progress of the work as well as give assistance to the State on technical matters pertaining to the interpretation of the Contract Documents. The Designer shall promptly check and approve samples, schedules, shop drawings and other submittals for compliance with the information contained in the Contract Documents, shall prepare change orders and shall collect all guarantees required of contractors or suppliers.
- 3.5.3 The Designer shall secure the written approval of the Project Manager prior to any substitution of any material or equipment. The Designer shall not direct any changes in scope or value of the contract work without the prior written approval of the Project Manager.
- 3.5.3 The Designer shall provide such interpretation and clarification of the Contract Documents as required for the proper construction of the Project, and shall make such decisions as required by the Contract Documents at such times and in such manner as to expedite the proper execution of the construction contract.
- 3.5.4 The Designer shall make weekly visits to the Project Site when work is in progress and assess the quality, quantity and adherence of the work to the Contract Documents. The Designer shall not be responsible for a contractor's failure to fully complete construction work in accordance with the Contract Documents, but will determine to his professional satisfaction that the interests of the State are safeguarded. During visits to the Project Site, and on the basis of individual and professional observation while at the Project Site, the Designer will keep the State informed of the progress of the work, will endeavor to guard the State against defects and deficiencies in the work of contractors and may condemn work as failing to conform to the intent of the Contract Documents.
- 3.5.5 Based on individual and professional observations and the contractor's Application for Payment, the Designer shall determine the amount due to the contractor and will issue Certificates for Payment in such amounts. The Certificates for Payment will constitute the official representation to the State, based on such observations, and the information contained in the Application for Payment that the contractor has completed the project to the degree claimed in the Application for Payment, and to the professional satisfaction of the Designer. By issuing a Certificate for Payment, the Designer will also represent to the State that, to the best of his/her knowledge, based on reasonable and prudent inquiry and professional observations, the quality of the work is in accordance with the Contract Documents. The Designer shall, within seven (7) days after receipt of the Application for Payment, issue said Certificate to the State or state in writing the reasons for it being withheld.
- 3.5.6 The Designer shall provide sufficient notice to the State in order to participate in the necessary inspections to determine substantial completion and shall, after conferring with the State's Site Representative and Project Manager, initiate a Certificate of Substantial Completion (DAPW 5). The Certificate shall be valid only upon written approval by the Director. The final Certificate for Payment shall follow such Substantial Completion approval.

- 3.5.7 The Designer shall furnish to the Division record documents demonstrating modifications made during the construction process, based on marked-up prints, drawings and other relevant information furnished by the contractors to the Designer.
- 3.5.8 The Designer shall collect and submit to the Division two (2) sets of all warranties, guarantees, manuals and operating directions.
- 3.5.9 The Designer shall make an inspection of the Project nine (9) months after the Substantial Completion approval has been issued in conjunction with the Project Manager and prior to the expiration of the one (1) year guarantee period. The Designer shall submit a written report of the inspection results the Project Manager.
- 3.5.10 On the first day of each month, the Designer shall furnish to the Project Manager duplicate copies of the Monthly Planning Report (DAPW 2) specifying the progress of the professional services and construction.
- 3.5.11 The Designer shall submit one (1) set of record documents to the Indiana Department of Homeland Security's Division of Fire and Building Safety within 60 days of the Directors acceptance of the Certificate of Substantial Completion.

#### ARTICLE 4. DESIGNER'S ADDITIONAL SERVICES.

Services by the Designer not set forth in Article 3 or in the *Public Works Designer Manual* shall constitute Additional Services and shall require the prior written approval and authorization of the Director. Such written approval and authorization may be granted for the performance of Additional Services for a set fee or at the hourly rates set forth in Article 7 herein.

#### ARTICLE 5. STATE'S RESPONSIBILITIES.

- 5.1 The State shall provide all available information as to the requirements for the Project as promptly as practicable.
- 5.2 The Director shall designate a Project Manager to act on the State's behalf. The Project Manager shall examine documents submitted by the Designer and promptly render decisions pertaining thereto. The Project Manager shall issue orders to contractors through the Designer to the extent that such a procedure is practicable.
- 5.3 If the State observes or otherwise becomes aware of any defects in the Project, it shall give prompt notice thereof to the Designer.

#### ARTICLE 6. PROJECT CONSTRUCTION COST.

- 6.1 "Project Construction Cost" means the total cost of all construction contracts involving work that has been designed or specified by the Designer in furtherance of the Project, but does not include any payments made to the Designer or consultants.
- 6.2 Project Construction Cost shall be based upon the following sources, with precedence in the order listed below:
  - 6.2.1 Lowest acceptable bona fide contractor's proposal, consisting of base bid and alternates, received and accepted.
  - 6.2.2 The Designer's most recent, accepted and approved Estimate of Probable Construction Cost.

**ARTICLE 7. DIRECT AND REIMBURSABLE EXPENSES.**

- 7.1 “Direct Personnel Expenses” shall include those of principals and employees engaged in the Project, including architects, engineers, designers, job captains, draftsmen, specification writers, typists, and project representatives who prepared research, designs, drawing production, specifications and other documentation pertaining to the Project, as well as other services rendered during construction. The Rate Schedule is attached as **Exhibit A** to this Contract.
- 7.2 Reimbursable Expenses include actual and written Director-authorized expenditures made by the Designer in furtherance of the Project.
- 7.3 All information or data produced through reimbursable expenses shall become the property of the State upon completion of the Project and shall be presented to the Project Manager at such time.

**ARTICLE 8. PERIODIC PAYMENTS TO THE DESIGNER.**

- 8.1 Payment on account of the Basic Design Services shall be made at the completion of Design Phase(s), and monthly thereafter, upon receipt by the State of an itemized claim in proportion to services rendered. The compensation for basic services shall not exceed the following percentages at the completion of each phase of the work.

Schematic Design Phase.....	10%
Design Development Phase.....	33%
Construction Documents Phase.....	66%
Bidding Phase.....	70%
Construction Phase.....	95%
Final Documents .....	100%

- 8.2 Payments for Additional Services of the Designer, as defined in Article 4, and for Reimbursable Expenses, as defined in Article 7, shall be made monthly upon the presentation and approval by the Director of the Designer's itemized claim.
- 8.3 No deduction shall be made from the Designer's compensation on account of liquidated damages or other sums withheld from payments to contractors.

**ARTICLE 9. FEE CLARIFICATION**

Fee for Basic Services as set forth herein: **\$XX,XXX.00**

Allowance for Additional Services, which may be authorized in writing by the Director, including site surveys, geotechnical surveys, filing fees for the Indiana Department of Homeland Security's Division of Fire and Building Safety, the Indiana State Department of Health and all other governmental authorities having jurisdiction over the Project's design, printing of bidding and construction documents, printing of final and as-built documents, and added services to expedite design or construction: **\$XX,XXX.00**

Total encumbrance for services set forth above: **\$XX,XXX.00**

**ARTICLE 10. ACCOUNTING RECORDS.**

Records of the Designer's direct personnel, consultant and reimbursable expense pertaining to this Contract and records of accounts between the State and the Designer shall be kept in accordance with Generally Accepted Accounting Principles. The Designer shall make such materials available at its offices at all

reasonable times during the contract term and for three (3) years from the date of final payment under this Contract, for inspection by the State or by any other authorized representative of state government. If requested, copies thereof shall be furnished at no cost to the State.

#### ARTICLE 11. DESIGNER RECOGNITION.

Whenever renderings, photographs of renderings, photographs of models, or photographs of the Project are released by the State for publicity, proper credit for design shall be given the Designer, provided, of such credit is without cost to the State.

#### ARTICLE 12. CERTIFICATION BOARD PREQUALIFICATION; LICENSURE.

The Designer certifies that it has been pre-qualified by the State of Indiana's Public Works Division Certification Board to perform the work and furnish the services required by this Project. The Designer further certifies that all information and documentation submitted by it in its Application for Prequalification Certification, the Designer's Proposal and submitted in response to the Project, is true, accurate and complete as of the date of this Contract's effectiveness. The Designer shall immediately notify the State of any material change to such information. The Designer shall immediately notify the State if, during the course of performance of this Contract, it or any of its principals are proposed for debarment or ineligibility, or become debarred or declared ineligible, from entering into contracts with the federal government or any department, agency or political subdivision of the State.

The Designer and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Designer pursuant to this Contract. The State shall not be required to pay the Designer for any services performed when the Designer, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification or accreditation, the Designer shall notify the State immediately and the State, at its option, may immediately terminate this Contract. If this Contract was awarded, in part, due to the involvement of a professional licensed by the Indiana Professional Licensing Agency, the licensed professional shall be listed in Section 14.25, *Key Persons*, of this Contract. The Designer shall immediately notify the State if the licensed professional is no longer employed or associated with the Designer for purposes of this Contract.

#### ARTICLE 13. CONFLICT OF INTEREST.

As used in this section:

"Immediate family" means the spouse, partner, housemate or the unemancipated children of an individual, as defined by 42 Indiana Administrative Code 1-3-13.

"Interested party," means:

1. The individual executing this Contract;
2. An individual who has an ownership interest of three percent (3%) or more of the Designer, if the Designer is not an individual; or
3. Any member of the immediate family of an individual specified under Subdivision 1 or 2.

"State" means the Indiana Department of Administration.

"State employee" means a state employee, a special state appointee or a state officer, as defined by IC 4-2-6-1(a)(9), (a)(18) and (a)(19), respectively.

- A. The Designer covenants that it neither has, nor will it have, a direct or indirect financial interest by way of an interested party in any other contract connected or associated with this Contract. The Designer further represents and warrants that no state employee, who is an interested party of the Designer as sole proprietor, or who serves as an officer, director, trustee, partner or employee of the

Designer as a legal business entity, participated in any decision or vote of any kind in the award of this Contract. As such and by the execution of this Contract, the Designer represents and warrants that the result of this Contract does not and will not create a conflict of interest under IC 4-2-6-9 or IC 4-2-6-10.5.

- B. The State may cancel this Contract, without recourse by the Designer, if an interested party is a state employee and a violation of IC 4-2-6-9 or IC 4-2-6-10.5 has occurred.
- C. The State will not exercise its right of cancellation under Section B above, if the Designer provides the State an opinion from the State Ethics Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or rule relating to ethical conduct of state employees. The State may take action, including cancellation of this Contract, consistent with an opinion of the State Ethics Commission obtained under this Section.
- D. The Designer has an affirmative obligation under this Contract to disclose to the State when an interested party is or becomes a state employee. The obligation under this section extends only to those facts that the Designer knows or reasonably should know.

#### ARTICLE 14. STATE STANDARD CONTRACT CLAUSES.

- 14.1 *Access to Records.* The Designer and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.
- 14.2 *Assignment; Successors.* The Designer binds its successors and assignees to all the terms and conditions of this Contract. The Designer shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Designer may assign its right to receive payments to such third parties as the Designer may desire without the prior written consent of the State, provided that the Designer gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
- 14.3 *Assignment of Antitrust Claims.* As part of the consideration for the award of this Contract, the Designer assigns to the State all right, title and interest in and to any claims the Designer now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- 14.4 *Audits.* The Designer acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Designer to be a "vendor" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the Designer shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133



(Audits of States, Local Governments, and Non-Profit Organizations). The Designer is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Designer's fiscal year. The Designer agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Designer, and not of a parent, member, or subsidiary corporation of the Designer, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Designer is not out of compliance with the financial aspects of this Contract.

If Federal funds are involved in this Contract, the State also considers the Designer to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Designer shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

14.5 *Authority to Bind Designer.* The signatory for the Designer represents that he/she has been duly authorized to execute this Contract on behalf of the Designer and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Designer when his/her signature is affixed, and accepted by the State.

14.6 *Changes in Work.* The Designer shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Designer shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

14.7 *Compliance with Laws.*

A. The Designer shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Designer to determine whether the provisions of this Contract require formal modification.

B. The Designer and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. **If the Designer has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Designer shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Designer is not familiar with these ethical requirements, the Designer should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Designer or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Designer. In addition, the Designer may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Designer certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Designer agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Designer. Additionally, further work or payments may be withheld,

delayed, or denied and/or this Contract suspended until the Designer is current in its payments and has submitted proof of such payment to the State.

D. The Designer warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Designer agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Designer's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Designer, the Designer may request that it be allowed to continue, or receive work, without delay. The Designer must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Designer warrants that the Designer and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Designer affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The Designer and any principals of the Designer certify that:

(A) the Designer, except for de minimis and nonsystematic violations, has not violated the terms of:

- (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
- (ii) IC §24-5-12 [Telephone Solicitations]; or
- (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) the Designer will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The Designer and any principals of the Designer certify that an affiliate or principal of the Designer and any agent acting on behalf of the Designer or on behalf of an affiliate or principal of the Designer, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

14.8 *Condition of Payment.* All services provided by the Designer under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

- 14.9 *Confidentiality of State Information.* The Designer understands and agrees that data, materials, and information disclosed to the Designer may contain confidential and protected information. The Designer covenants that data, material, and information gathered, based upon or disclosed to the Designer for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.
- The parties acknowledge that the services to be performed by Designer for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Designer and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Designer, Designer agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.
- 14.10 *Continuity of Services.*
- A. The Designer recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another designer, may continue them. The Designer agrees to:
1. Furnish phase-in training; and
  2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Designer shall, upon the State's written notice:
1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
  2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Designer shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
- C. The Designer shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Designer also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Designer shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Designer shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).
- 14.11 *Debarment and Suspension.*
- A. The Designer certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, State, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Designer.
- B. The Designer certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Designer shall

immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

14.12 *Default by State.* If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Designer may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

14.13 *Disputes.*

A. Should any disputes arise with respect to this Contract, the Designer and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Designer agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Designer fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Designer as a result of such failure to proceed shall be borne by the Designer, and the Designer shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within 30 business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within 30 business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Designer of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Designer to terminate this Contract, and the Designer may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

- 14.14 *Drug-Free Workplace Certification.* As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Designer hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Designer will give written notice to the State within ten (10) days after receiving actual notice that the Designer, or an employee of the Designer in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Designer certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Designer's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
  - B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Designer's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
  - C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Designer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
  - D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
  - E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
  - F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
- 14.15 *Employment Eligibility Verification.* As required by IC §22-5-1.7, the Designer swears or affirms under the penalties of perjury that the Designer does not knowingly employ an unauthorized alien. The Designer further agrees that:
- A. The Designer shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Designer is not required to participate should the E-Verify program cease to exist. Additionally, the Designer is not required to participate if the Designer is self-employed and does not employ any employees.
  - B. The Designer shall not knowingly employ or contract with an unauthorized alien. The Designer shall not retain an employee or contract with a person that the Designer subsequently learns is an unauthorized alien.

C. The Designer shall require his/her/its subcontractors who perform work under this Contract to certify to the Designer that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Designer agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Designer fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

- 14.16 *Employment Option.* If the State determines that it would be in the State's best interest to hire an employee of the Designer, the Designer will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.
- 14.17 *Force Majeure.* In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- 14.18 *Funding Cancellation.* When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- 14.19 *Governing Law.* This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.
- 14.20 *HIPAA Compliance.* If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Designer covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.
- 14.21 *Indemnification.* The Designer agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Designer and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Designer.
- 14.22 *Independent Contractor; Workers' Compensation Insurance.* The Designer is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Designer shall provide all necessary unemployment and workers' compensation insurance for the Designer's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.
- 14.23 *Information Technology Enterprise Architecture Requirements.* If the Designer provides any information technology related products or services to the State, the Designer shall comply with all IOT standards,

policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Designer specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC §4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Designer fails to cure a breach of this provision within a reasonable time.

#### 14.24 *Insurance.*

- A. The Designer and their subcontractors ( if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Designer for any and all claims of any nature which may in any manner arise out of or result from Designer's performance under this Contract:
1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$500,000 per person and \$2,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
  2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
  3. Professional Liability, also known as Errors and Omissions Insurance, for those Designers required to hold a professional license by the Indiana Professional Licensing Agency with limits not less than **\$XXX,XXX** per cause of action and **\$X,XXX,XXX** per occurrence. This is coverage available to pay for liability arising out of the performance of professional or business related duties, with coverage tailored to the needs of the specific profession. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract
  4. The Designer shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.
- B. The Designer's insurance coverage must meet the following additional requirements:
1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
  2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Designer.
  3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Designer in excess of the minimum requirements set forth above.

The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
  5. The Designer waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.
- C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Designer shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

14.25 *Key Person(s).*

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Designer is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Designer shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Designer from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Designer shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are: The licensed individual referenced in Article 1 of this Contract.

- 14.26 *Licensing Standards.* The Designer, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Designer pursuant to this Contract. The State will not pay the Designer for any services performed when the Designer, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Designer shall notify the State immediately and the State, at its option, may immediately terminate this Contract.
- 14.27 *Merger & Modification.* This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.
- 14.28 *Minority and Women's Business Enterprises Compliance.* Award of this Contract was based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan. The following certified MBE or WBE subcontractors will be participating in this Contract:

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>PERCENT</u>
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*Terms for participation are as provided in the Designer's Proposal to the State's request for participation, which are described and captured in the Contract Documents.*

A copy of each subcontractor agreement must be submitted to IDOA's MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Designer must obtain approval from IDOA's MBE/WBE Division before changing the participation plan submitted in connection with this Contract.

The Designer shall report payments made to MBE/WBE Division subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." MBE/WBE Division subcontractor payments shall also be reported to the Division as reasonably requested and in a format to be determined by Division.

- 14.29 *Nondiscrimination.* Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Designer covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Designer certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Designer or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

- 14.30 *Notice to Parties.* Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:                      Director  
Public Works Division  
Indiana Department of Administration  
402 W Washington St Room W467  
Indianapolis, IN 46204

B. Notices to the Designer shall be sent to:                      **[INSERT DESIGNER NAME]**  
   **[INSERT DESIGNER ADDRESS]**

C. As required by IC 4-13-2-14.8, payments to the Designer shall be made via electronic funds transfer in accordance with instructions filed by the Designer with the Indiana Auditor of State.

- 14.31 *Order of Precedence; Incorporation by Reference.* Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) the Selection Letter issued by the State; (3) attachments prepared by the State, (4) *Public Works Designer Manual*, and (4) the Designer's

Proposal; and (5) attachments prepared by the Designer. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

14.32 *Ownership of Documents and Materials.*

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the “Materials”) not developed or licensed by the Designer prior to execution of this Contract, but specifically developed under this Contract shall be considered “work for hire” and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Designer grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Designer, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Designer shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Designer. Any loss or damage thereto shall be restored at the Designer’s expense. The Designer shall provide the State full, immediate, and unrestricted access to the Materials and to Designer’s work product during the term of this Contract.

14.33 *Payments.*

A. All payments shall be made 35 days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Designer in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20

B. The State Budget Agency and the Designer acknowledge that Designer is being paid in advance for the maintenance of equipment and / or software. Pursuant to IC §4-13-2-20(b)(14), Designer agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

14.34 *Penalties/Interest/Attorney’s Fees.* The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney’s fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State’s failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

14.35 *Progress Reports.* The Designer shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

14.36 *Public Record.* The Designer acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

- 14.37 *Renewal Option.* This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.
- 14.38 *Severability.* The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
- 14.39 *Substantial Performance.* This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.
- 14.40 *Taxes.* The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Designer as a result of this Contract.
- 14.41 *Termination for Convenience.* This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Designer of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Designer shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Designer shall be compensated for services herein provided but in no case shall total payment made to the Designer exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.
- 14.42 *Termination for Default.*
- A. With the provision of thirty (30) days notice to the Designer, the State may terminate this Contract in whole or in part if the Designer fails to:
1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
  2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
  3. Make progress so as to endanger performance of this Contract; or
  4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Designer will be liable to the State for any excess costs for those supplies or services. However, the Designer shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Designer and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

- 14.43 *Travel.* No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Designer for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.
- 14.44 *Indiana Veteran's Business Enterprise Compliance.* Award of this Contract was based, in part, on the Indiana Veteran's Business Enterprise ("IVBE") participation plan. The following IVBE subcontractors will be participating in this Contract:

VB	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT
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N/A

A copy of each subcontractor agreement shall be submitted to IDOA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Designer must obtain approval from IDOA before changing the IVBE participation plan submitted in connection with this Contract.

The Designer shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." IVBE subcontractor payments shall also be reported to IDOA as reasonably requested and in a format to be determined by IDOA.

- 14.45 *Waiver of Rights.* No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Designer shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Designer's negligent performance of any of the services furnished under this Contract.
- 14.46 *Work Standards.* The Designer shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Designer shall grant such request.

### Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Designer, or that the undersigned is the properly authorized representative, agent, member or officer of the Designer. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Designer, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Designer attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

**In Witness Whereof**, Designer and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

**XXXXXXXXXX**  
[Designer]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Department of Administration**  
**Public Works Division**

By: \_\_\_\_\_  
Martin Hurford, Director DAPW  
*For IDOA Commissioner if less than \$1,000,000*  
Date: \_\_\_\_\_

**Approved by:**  
Department of Administration  
*For Contract in excess of \$2,500*

By: \_\_\_\_\_  
Jessica Robertson, Commissioner

Date: \_\_\_\_\_

**Approved by:**  
State Budget Agency *PURSUANT TO IC 4-13-2-14.1*  
**APPROVAL OF THE BUDGET AGENCY**  
**IS NOT REQUIRED FOR CONTRACTS**  
**UNDER \$100,000.00**

By: \_\_\_\_\_  
Brian E. Bailey, Director

Date: \_\_\_\_\_

**Approved as to Form and Legality:**  
*Form approval has been granted by the Office*  
*of the Attorney General pursuant to*  
*IC 4-13-2-14.3(e) on August 27, 2015.*  
**FA 15-37**

This Instrument was prepared by: [INSERT NAME] on XX/XX/XXXX

Legal Counsel \_\_\_\_\_ (initials)

**EXHIBIT A**

**SCHEDULE OF RATES FOR USE IN JUSTIFYING COSTS OF STATE  
AUTHORIZED ADDITIONAL SERVICES**

FIRM NAME: **DESIGN FIRM NAME**

PUBLIC WORKS PROJECT NUMBER: **NUMBER**

Terms of additional services are set forth in Articles 4 and 7.

RATE/HOUR: **[INSERT]**

Project Manager:

Project Architect:

Job Captain:

Draftsperson:

Specification Writer:

Typist:

Project Representative:

Structural Engineer:

Structural Draftsperson:

Mechanical Project Manager:

Mechanical Engineer:

Electrical Project Manager:

Electrical Engineer:

Draftsperson Mech/Elect:

Mech/Elect Representative:

Mech/Elect Specification Writer: